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August 25, 2021

BY E-FILING & E-MAIL

Sandra Schickel
Field Examiner
National Labor Relations Board, Region 28
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RE: Amazon Hub
Case 28-CA-280427

Dear Ms. Schickel:

We represent Amazon.com Services LLC in connection with the referenced charge filed by [redacted] According to the charge and your letter dated [redacted] 2021, [redacted] claims a member of Amazon management invited [redacted] to quit and directed [redacted] to deal with the owner of [redacted] employer "on [redacted] own," both in response to activity allegedly protected by Section 7 of the Act. As explained in more detail below, Amazon did not employ [redacted] did not engage in any protected concerted activity during [redacted] interaction with Amazon management, and Amazon management never invited [redacted] to quit or told [redacted] "would have to deal with [redacted] on [redacted] own." The charge is without merit and should be dismissed.

The Facts

[redacted] was employed by NO HUDL, Inc., a private delivery company that contracts with Amazon to deliver packages from an Amazon facility located in Chandler, Arizona, to customers who have placed online orders for various products. NO HUDL employs both delivery drivers and dispatchers, and the [redacted] of NO HUDL is [redacted] NO HUDL's operations and its employees. [redacted] worked for NO HUDL as a delivery driver. Amazon did not employ [redacted]

According to [redacted] on Friday, July 9, 2021, [redacted] called the NO HUDL dispatch team after [redacted] unexpectedly while out on a route delivering packages and sought assistance because [redacted] was unprepared for the situation. Over the weekend, [redacted] e-mailed Amazon [redacted] to express dissatisfaction with the way [redacted] and NO HUDL [redacted] handled the July 9 incident and to ask [redacted] for help. [redacted] did not respond, as [redacted] was not working on the weekend.

On Monday, [redacted] even though NO HUDL had not scheduled [redacted] to work that day, [redacted] arrived at Amazon's facility and insisted on speaking with [redacted] agreed to meet with [redacted] at which point [redacted] demanded that [redacted] help [redacted] to address [redacted] dissatisfaction with the way NO HUDL responded to the situation on July 9.

[redacted] reminded [redacted] that [redacted] did not work for Amazon, that [redacted] was an HR Business Partner for Amazon, and that it was not [redacted] role to address or resolve human resources issues for NO HUDL employees. [redacted] accused [redacted] of not helping [redacted] because [redacted] is a [redacted] and became angry. At one point during the exchange, [redacted] a member of Amazon's management but not a Human Resources representative, also joined the conversation and then left again. Throughout the interaction, [redacted] became increasingly unprofessional, and [redacted] spouted profanities at [redacted] on multiple occasions (e.g., "You don't give a f**k" and "You don't f**king care!"). Eventually, [redacted] asked [redacted] to leave [redacted] work area because of [redacted] rude and unprofessional behavior. Neither [redacted] nor [redacted] ever invited [redacted] to quit or told [redacted] that [redacted] would have to deal with [redacted] "on [redacted] own."[1]

Amazon's Position

At the outset, the charge should be dismissed because [redacted] never engaged in protected concerted activity. Your letter contains allegations that [redacted] made two specific statements in response to protected concerted activity, which requires "that an employee's action be taken for purposes of collective bargaining or other mutual aid or protection." *NLRB v. City Disposal Sys. Inc.*, 465 U.S. 822, 830 (1984). When [redacted] spoke to [redacted] and [redacted] was airing a *personal* grievance over the way [redacted] employer handled the [redacted] while working. At no point did [redacted] speak to [redacted] or [redacted] about other co-workers, claim that [redacted] was acting on others' behalf, or otherwise discuss any terms and conditions of anyone else's employment with NO HUDL. Accordingly, [redacted] conduct was not protected by the Act. *See, e.g., Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987) (individu[redacted] complaints do not constitute concerted activity, even where the complaint may incidentally benefit other employees). This analysis does not change even if [redacted] believed [redacted] was complaining about sex discrimination. Just as "discrimination on the basis of . . . sex . . . is not per se a violation of the Act," *see Jubilee Mfg. Co.*, 202 NLRB 272, 273 (1973), complaining about alleged sex discrimination is not inherently protected concerted activity.

In any case, neither [redacted] nor [redacted] ever invited [redacted] to quit [redacted] job with NO HUDL or declared that [redacted] would have to deal with [redacted] "on [redacted] own." [redacted] simply explained that [redacted] was not the appropriate person to address [redacted] complaint, as a NO HUDL employee. Even so, it would not have violated the Act for [redacted] or [redacted] to make such comments to address [redacted] complaint with [redacted] own employer, even if [redacted] complaints to [redacted] had constituted protected concerted activity. Re-directing complaints to the appropriate person is not an unfair labor practice. On the contrary, even in organized workplaces, an employer retains the right to choose its own representatives for dealing with grievances. *See* 29 U.S.C. § 158(b)(1)(B)

[1] It is Amazon's understanding that NO HUDL discharged [redacted] owing to both performance and behavioral concerns sometime after this incident. Amazon had no involvement or input into NO HUDL's decision to discharge [redacted]

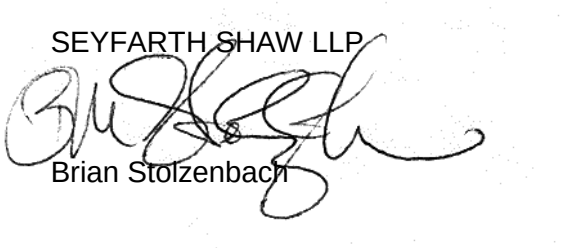
(preventing unions from "restrain[ing] or coerc[ing] . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances").[2]

Simply put, even if [redacted] allegations were factually accurate, [redacted] assertions do not describe a violation of the Act. The Board exists to enforce a particular statute and police particular conduct. The conduct [redacted] alleges does not fall within the Board's purview.

We trust the information submitted in and with this statement of position is sufficient to warrant dismissal of the charge. That said, should you need further information or have any additional questions, please let us know.

Respectfully submitted,

SEYFARTH SHAW LLP



Brian Stolzenbach

c: Flavia Costea

[2] At the same time, while Amazon denies that it happened here, nor would it have been the best choice if it had happened, it remains the fact that suggesting resignation from employment to an employee who is unhappy with the way [redacted] manager treated [redacted] (and only [redacted] on one specific occasion is not *unlawful*. It does not violate the Act.

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December 7, 2021

BY EMAIL AND E-FILING

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RE: Amazon Hub
Case 28-CA-280427

Dear Ms. Schickel:

As you know, we represent Amazon.com Services, LLC in connection with the referenced charge filed by former NO HUDL employee (b) (6), (b) (7)(C). This letter provides the Company's supplemental statement of position in response to the amended charge and your supplemental request for evidence dated November 10, 2021. As you know, (b) (6), (b) (7)(C) was employed by NO HUDL, and we understand that NO HUDL terminated (b) (6), (b) (7)(C) employment earlier this year. In your most recent correspondence, you explain the basis for (b) (6), (b) (7)(C) amended charge against Amazon. First, (b) (6), (b) (7)(C) claims that Amazon (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) made certain allegedly unlawful statements to (b) (6), (b) (7)(C) during a meeting in the Amazon HR office on (b) (6), (b) (7)(C) 2021. Second, (b) (6), (b) (7)(C) claims that Amazon discharged (b) (6), (b) (7)(C) from employment (b) (6), (b) (7)(C) (after taking various interim steps, such as removing (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) route and suspending (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) protected concerted activity. These allegations have no merit, and the charge should be dismissed.

Every allegation by (b) (6), (b) (7)(C) is premised (as it must be) on the notion that (b) (6), (b) (7)(C) engaged in protected concerted activity during (b) (6), (b) (7)(C) meeting with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) but this is not the case. (b) (6), (b) (7)(C) complaints during that meeting were entirely individualized. (b) (6), (b) (7)(C) took issue with NO HUDL's handling of (b) (6), (b) (7)(C) own personal situation on July 9, when (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was still out on (b) (6), (b) (7)(C) route.

Perplexed that the Region had not already dismissed this charge, given the lack of any concerted activity by (b) (6), (b) (7)(C) we requested a telephone conference. During our telephone conference on November 15, you explained that (b) (6), (b) (7)(C) claims to have engaged in protected concerted activity because (b) (6), (b) (7)(C) spoke to "other employees" about "(b) (6), (b) (7)(C) issues" at some point in time, separate and apart from (b) (6), (b) (7)(C) meeting with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) As we understand it, however, even (b) (6), (b) (7)(C) does not claim that (b) (6), (b) (7)(C) knew about these supposed conversations

with other people. Accordingly, nothing *Amazon* may have done with respect to [redacted] could have violated the Act.

First, [redacted] statements in the [redacted] meeting were made in response to [redacted] conduct during that meeting, and [redacted] conduct during that meeting was not concerted in any way (and was not protected, either, given [redacted] behavior during the meeting). Regardless of whether [redacted] may have engaged in protected concerted activity at some other time, whatever [redacted] allegedly said in their meeting (and [redacted] does not agree with [redacted] apparent account of their exchange) could not have been in response to activity protected by Section 7 of the Act because [redacted] did not know about any such activity. Accordingly, nothing [redacted] allegedly said in the [redacted] meeting could have "interfere[d] with, restrain[ed], or coerce[d]" [redacted] in the exercise of [redacted] Section 7 rights. *See* 29 U.S.C. § 158(a)(1). As a result, the portion of the charge pertaining to that meeting should be dismissed.

As for the allegation that Amazon discharged [redacted] from employment, that allegation also has no merit, for multiple reasons. First and foremost, Amazon had nothing to do NO HUDL's employment decisions regarding [redacted] Consequently, even if [redacted] engaged in protected concerted activity at some point, and even if Amazon had jointly employed [redacted] along with NO HUDL (as asserted in the amended charge), Amazon still could not be held liable for NO HUDL's employment decisions. *See, e.g.*, *Southern Cal. Gas Co.*, 302 NLRB 456, 462-63 (1991). In *SCG*, a property owner contracted out its janitorial needs to a janitorial company, which discharged five of its employees for engaging in pro-union activity—a blatant violation of the Act. *Id.* The union filed unfair labor practice charges against the property owner, arguing that it was responsible for the discharges on a joint employer theory. *Id.* Even while assuming the property owner was a joint employer with the janitorial contractor, the ALJ nevertheless declined to hold the property owner responsible for the contractor's unfair labor practices because the property owner did not make the decision to discharge the employees. *Id.* The Board affirmed the ALJ's decision unanimously. *See id.* at 456. Here, too, Amazon cannot be held liable for whatever decisions NO HUDL made with respect to [redacted] employment.

Regardless, even if Amazon had been involved in those decisions, its actions still could not have violated the Act because (as noted above) Amazon had no knowledge that [redacted] ever engaged in protected concerted activity. *See, e.g.*, *Reynolds Elec., Inc.*, 342 NLRB 156, 156-157 (2004). In *Reynolds*, the charging party had spoken with other workers on a construction project about his and their common belief that the job was a prevailing wage project (clearly, protected concerted activity), and the charging party later made inquiries to his supervisor that were deemed to be individualized inquiries about the propriety of his own wage rate on the job (not concerted, but individualized, conduct). *Id.* at 156-57. Even though the employer subsequently laid off the charging party because he kept pressing the issue with respect to his own wage rate, the Board found no violation of the Act because the charging party's behind-the-scenes concerted conversations with other workers did not transform his individualized complaints into concerted activity. *Id.* at 156-57.

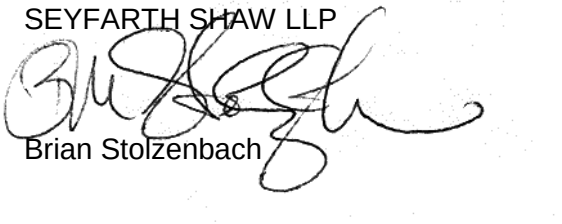
Indeed, the General Counsel's Office of Appeals recently affirmed Region 25's dismissal of a very similar charge for the very same reason. *See* Exhibit 1. In that case, a contractor to Rivian discharged one of its employees, allegedly for engaging in protected concerted activity inside one of Rivian's facilities, and the individual filed separate charges against both the contractor and Rivian, asserting in Rivian's case that it was somehow involved in the contractor's discharge decision. In affirming dismissal of the charge, the Office of Appeals

explained the crux of its decision this way: "Specifically, the evidence did not establish that you were seeking to initiate group action or to bring group complaints to management's attention, or even assuming you were, that the Employer knew about it before it made its decision." *See id.*

For the same reason, the Board cannot conclude that Amazon violated the Act with respect to (b) (6), (b) (7)(C) did not engage in protected concerted activity, and even if (b) (6), (b) did, Amazon did not know about it. As a result, the charge should be dismissed.

Respectfully submitted,

SEYFARTH SHAW LLP



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